



Muller & another v Lochab Transport Limited; Daily Trucks Limited & 2 others (Objector) (Civil Suit E234 of 2024) [2024] KEHC 13995 (KLR) (Commercial and Tax) (8 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13995 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E234 OF 2024
FG MUGAMBI, J
NOVEMBER 8, 2024**

BETWEEN

HEINZ MULLER 1ST PLAINTIFF

RUTH MULLER 2ND PLAINTIFF

AND

LOCHAB TRANSPORT LIMITED DEFENDANT

AND

DAILY TRUCKS LIMITED OBJECTOR

GAMU WOODWORKS LIMITED OBJECTOR

FRACHT AG OBJECTOR

RULING

1. In the year 2016, the decree holders advanced a loan facility of USD 450,000.00 to the judgment debtor. The amount fell into arrears and the decree holders successfully sued the judgment debtor for the amount due, by a plaint dated 2/5/2024. The judgment debtor failed to enter appearance or file a defence, and an interlocutory judgment was entered on 20/5/2024, followed by a decree issued on 28/5/2028. The decree holder, began execution through M/S Blegif Consult Auctioneers, precipitating the three applications by the objectors which are the subject of this ruling.

The applications:

2. The following three applications have been filed;



- i. The application dated 4/7/2024 by Daily Trucks Limited the 1st Objector (herein the first application);
 - ii. The Application dated 5/7/2024 by Gamu Woodwork Limited the 2nd Objector (herein the 2nd Application) and
 - iii. The application dated 10/7/2024 by Fracht Ag the 3rd Objector (herein the 3rd application).
3. The first and second applications raise comparable arguments. Both are brought under Order 22 Rules 51 & 52, Order 40 Rule 1 of the [Civil Procedure Rules](#) and Sections 3A of the [Civil Procedure Act](#). They seek to injunct the decree holders from selling proclaimed goods allegedly belonging to the 1st and 2nd objectors.
4. The objectors contend that they obtained the proclaimed goods from the judgment debtor and that they have legal and beneficial interests in the said goods.
5. The 1st objector claims ownership of motor vehicles KBP 632N, KBN 648H, KBN 647H, KCP 348X, KCP 351X, KCP 346X, KAX 280L, and KCK 015B. The 2nd objector alleges that it is the beneficial owner of the motor vehicles KCK 015B and KDE 384F.
6. In response to the objections raised, the decree holder contends that the judgment debtor is a director in the 1st objector company. He takes issue with the decree holder for fraudulently and illegally transferring the proclaimed goods to the 1st objector so as to avoid satisfying the decree. It is therefore his case that the objector's applications are brought in bad faith.
7. The application dated 10/7/2024 was filed by the 3rd objector. It seeks to raise the attachment of the judgment debtor's auctioned assets and stay of execution on respect thereof. It is premised on the ground that the 3rd objector is the beneficial owner of all the assets listed under the proclamation notice dated 11/6/2024 pursuant to a Joint Working Agreement executed on 29/6/2021 between the decree holder and the 3rd objector. The 3rd objector contends that the assets in question were purchased using funds availed by the 3rd objector.
8. In response to the applications, the decree holder submits that the same have been overtaken by events as the auction of the judgment debtor's assets was finalised on 4/7/2024 but the transfer to the purchasers had been hampered by the objectors. They further submit that no proof has been adduced to support ownership of the auctioned motor vehicles. The decree holder further contends that the 3rd objector is an unsecured creditor and as such ought to move the court appropriately to seek compensation from the judgment debtor.
9. The parties canvassed the applications through written submissions which I have carefully considered, alongside the evidence and pleadings filed. The main issue for determination is whether the objectors have made a case to lift the proclamations.
10. The threshold for such applications is guided by Order 22 Rule 51(1) of the [Civil Procedure Rules](#). It provides that:

“Any person claiming to be entitled to or to have legal or equitable interest in the whole or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of the sale of such property give notice in writing to the Court and to all the parties and to the decree-holder of his objection to the attachment of such property.”



11. The success of an application under the provision axes on whether a party has sufficiently demonstrated the existence of a legal and equitable interest in the attached goods. This principle has been underscored in various judicial pronouncements, including the case of *Arun V Sharma Astana Raikundaha T/ A Raikundaha & Co Advocates & 4 Others*, (2014) KEHC 1412 (KLR). Additionally, in *Stephen Kiprotich Koech V Edwin K. Barchilei; Joel Sitienei (Objector)*, [2019] eKLR, the court held:

“The core of objection proceedings, the objector must adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property(s) attached. For this purpose, he may raise an objection on the ground, inter alia, that he has some beneficial interest in the property. A beneficial interest is as much an interest within the meaning of the Rules as a legal interest in the property attached.”
12. Registration of a motor vehicle provides prima facie evidence of ownership. Such evidence can however be rebutted by way of further evidence to the contrary. Section 8 of the *Traffic Act* provides that:

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”
13. The onus lay with the objectors to prove their ownership of the said motor vehicles by providing the court with the respective logbooks. The onus of disproving the ownership would then move to the decree holders to disprove the objector’s evidence. The Court of Appeal in the case of *Ignatius Makau Mutisya V Reuben Musyoki Muia*, [2015] eKLR cited with approval from the Ugandan Court of Appeal the case of *Osapil V Kaddy* (2000) 1 EALA 187. It was held by the latter that:

“... a registration card or logbook was only prima-facie evidence of title to a motor vehicle. The person in whose name the vehicle was registered was presumed to be the owner thereof unless proved otherwise.”
14. Against this legal position I now turn to analyse the evidence presented before this court. The 1st objector attached proof of legal ownership by way of copies of logbooks for KCC 179M registered on 25/2/2015, KCP 351X, KCP 348X, and KCP 346X, all registered on 19/3/2018. The logbooks indicate that the registered owner of the motor vehicles is the 1st objector.
15. The 2nd objector attached to its application the logbooks for Motor Vehicle KCK 015B which reveals that the motor vehicle was registered on 12/5/2016 to the judgment debtor. With respect to motor vehicle KDE 384F, the 2nd objector adduced a copy of motor vehicle search records dated 7/5/2024 which reveals that as at 30/9/2021 the vehicle was registered in the name of the 2nd objector.
16. I have looked at the evidence in rebuttal of the 1st objector’s application. The decree holder has produced details of registration from the NTSA indicating that the motor vehicles KBP 632N; KBN 648H; KBN 647H; KAX 280L; KCK 015B; KCP 351X; KCP 348X and KCP 346X are all registered in the judgment debtor’s name. The information is as recent as 12th July 2024. I would agree with the decree holder that any purported transfer as alleged by the 1st objector has not been proved. The 1st objector has only annexed applications for transfer and not formal registration documents to prove the current ownership.
17. In any case, even if this proof had been attached, I would again concur with the submission that the said transfers, being made in May 2024, a few days prior to judgment being entered against the 1st objector, is on the face of it made in bad faith and with an intention to avoid execution. I have not been given any



reason as to why the transfer would otherwise be executed at such timing despite the full knowledge that there was an unexecuted judgment and decree issued against the judgment debtor.

18. As such, I find that the 1st objector has not proved that it has a legitimate legal interest in the aforesaid motor vehicles.
19. As far as the 2nd objector is concerned, in the absence of any evidence in rebuttal by the decree holder, I find that they have proved legal ownership of motor vehicle KDE 384F.
20. Turning to the application by the 3rd objector, the claim for a beneficial and equitable ownership of all the assets listed in the proclamation notice is based on the asset financing to the joint venture. The 3rd objector adduced a Joint Working Agreement between Fracht Ag and Lochab Transport Ltd dated 29th June 2021. A perusal of the same shows it was a mutual agreement to jointly invest and set up a joint venture for the development of heavy lift transports in the region. The role of the 3rd objector within the venture was asset financing and business development.
21. The decree holder on the other hand insists that all the property listed in the proclamation notice is owned by the judgment debtor. They further insist that the application has been overtaken by events as the auction had already taken place.
22. I have considered the evidence on record and I note that while the 3rd objector contends that there was an injunction in place against the proclamation, the same is not substantiated. I have seen the temporary injunction orders which I issued on 21st May 2024 up to 25th June 2024. I do not see the extended injunction orders that the 3rd objector contends were issued by Visram, J or any other orders stopping the said sale of the motor vehicles.
23. In the absence of such proof I proceed on the assumption that the proclamation and attachment were procedural as against the 3rd objector in execution of a valid decree. Noting that this court has made a factual finding that based on the evidence presented, the 3rd objector has not proved legal or beneficial ownership of the motor vehicles, the existence of HCCOMM E272/2024 without any injunctive orders does not bar the execution herein.
24. It is further my view that the 3rd objector has not provided proof of his lien over the motor vehicles in question. There is no evidence of the extent of investment by way of financing towards the motor vehicles which would prove that the 3rd objector has a lien over the vehicles. The purported loan agreements provide very scanty information over the purpose and terms of the loan facilities extended by the 3rd objector.
25. The 3rd objector has attached details of motor vehicle registration details from the NTSA. None of the vehicles in question is registered jointly or solely in the name of the 3rd objector, as one would expect, being an asset financier. This further casts doubt to the claim of lien and therefore ownership over the said vehicles.
26. Needless to say, the 3rd objector did not discharge the burden of proof placed upon it under Sections 107 and 109 of the *Evidence Act*. They did not rebut the presumption of ownership under Section 8 of the *Traffic Act* to prove ownership of the motor-vehicles at the time of proclamation and attachment.
27. For these reasons I am not persuaded that the application meets the threshold set out in the objection proceedings.

Disposition

28. In conclusion, I make the following findings:



- i. The 1st objector's application dated 4/7/2024 lacks merit and is dismissed with costs.
- ii. The 2nd objector's application succeeds but only with respect to the motor vehicle KDE 384F. The decree holder has not satisfied this court that the said vehicle has been sold and registered in the name of a 3rd party. As such I accordingly order the lifting of the proclamation on the said vehicle.
- iii. The 3rd objector's application dated 10/7/2024 lacks merit and is dismissed with costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 8TH DAY OF NOVEMBER 2024.

F. MUGAMBI

JUDGE

